International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO *and* Holt Cargo Systems, Inc. and International Longshoremen's Association, Local 1566, AFL–CIO. Case 4–CD–812

October 29, l992

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on June 19, 1991, by Holt Cargo Systems, Inc. (Holt), alleging that the Respondent, International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO (Local 724 or IAM Local 724) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Holt to assign certain work to employees represented by Local 724 rather than to employees represented by International Longshoremen's Association, Local 1566, AFL–CIO (Local 1566 or ILA Local 1566). The hearing was held on November 20, 21, and December 4, 1991, and January 21, 1992, before Hearing Officer Barbara Joseph. All the parties filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Holt, a Delaware corporation, is engaged in warehousing, trucking, and stevedoring at pier and warehouse facilities in Gloucester City, New Jersey, and at Packer Avenue, in Philadelphia, Pennsylvania. During the past year, Holt derived gross revenues in excess of $1 million and purchased and received materials and supplies valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania. The parties stipulated, and we find, that Holt is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 724 and Local 1566 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Holt performs stevedoring for shipping lines at two terminals in the Philadelphia area, a terminal in Gloucester, New Jersey, and a terminal at Packer Avenue in Philadelphia, Pennsylvania. As a stevedore, Holt, inter alia, handles refrigerated containers. The containers are refrigerated either by using nitrogen gas or external electrical power. The work surrounding the hooking and hanging of nitrogen bottles and the plugging and unplugging of electrical sources, as well as hanging generator sets, is known as ''reefer'' work, an abbreviation for refrigeration work. Reefer work also involves monitoring and recording the temperature of the refrigerated cargo.

Holt began its container operation in Gloucester in 1984, where its first electrically refrigerated container customer was ABC Line. Holt maintenance and repair employees represented by Local 724 performed the reefer work for that container customer. Holt and Local 724 are parties to a collective-bargaining agreement effective from October 1, 1991, until October 1, 1995.

In 1985, ACT Pace Lines discontinued its use of the Packer Avenue Terminal and began using Holt's stevedoring services at Gloucester. While ACT Pace was at Packer Avenue, employees represented by Local 1566 had performed the reefer work for ACT Pace. When that carrier went to Gloucester, a jurisdictional dispute arose at Gloucester over hanging and maintaining refrigerated units involving, inter alia, Local 1566 and Local 724. The Board considered the dispute pursuant to its authority under Section 10(k) of the Act. During the pendency of the 10(k) proceeding, Local 1566 continued to perform reefer work for ACT Pace and another carrier, Columbus Lines. Both lines almost exclusively used nitrogen gas refrigeration.

In April 1989, the Board issued a Decision and Determination of Dispute[1] which awarded, inter alia, all the reefer work at the Gloucester terminal, both electric and nitrogen, to employees represented by Local 724. Despite the award, Holt continued to use employees represented by ILA Local 1566 to work on the nitrogen containers (principally for ACT Pace Lines and Columbus Lines) at the Gloucester facility. Local 724 continued to plug and unplug the electric reefer containers (principally for ABC Line) and to do the pretripping[2] and repair work on all the reefer equipment.

On April 1, 1989, Holt took possession of the Packer Avenue Terminal under lease with the Philadelphia Regional Port Authority. At that time, Holt used employees represented by Local 1566 to do the monitoring, hooking, plugging, and unplugging of both nitrogen and electrically refrigerated containers. During Holt's first year of operation at Packer, two to five shipping lines used their services. Holt employees represented by Local 1566 handled over 19,000 containers the first year. The number of containers serviced reached over 70,000 by 1991.

[1] *Teamsters Local 158 (Holt Cargo)*, 293 NLRB 917 (1989).

[2] Pre-tripping refers to the preparation of empty containers to send out to pick up cargo. The containers are cleaned, equipped with a nitrogen bottle or generator set, brought down to temperature, and otherwise prepared for the receipt of refrigerated cargo.

In early 1991, Holt began to move its cranes from Gloucester and consolidated its entire container operation at the Packer Avenue terminal. ABC Line, whose reefer servicing had been provided by labor represented by Local 724, was one of the shipping lines that planned to move its operation to Packer. According to Thomas Holt, Holt's president, whose testimony is not controverted, in about April or May 1989, prior to the consolidation, Holt entered into an oral ''understanding'' with Local 724's business representative, Greg McAnally, that employees represented by Local 724 would get the reefer work after the consolidation at Packer. Holt testified that Local 1566 ''people'' were aware ''we were coming after that electrical work as early as April of '89 . . . .''

By letter dated May 1, 1991, Local 1566 filed a grievance with the Philadelphia Marine Trade Association (PMTA), the multiemployer bargaining association which includes Holt, requesting a meeting with the Local Industry Grievance Committee, pursuant to the ILA Master Contract. The letter stated that Local 1566 had always performed the refrigerated container work at Packer Avenue and that Local 1566 was concerned about preserving its work jurisdiction in the face of ABC Line's reluctance to confirm that this reefer work at Packer Avenue belonged to Local 1566. The Industry Hearing Committee determined that the disputed work was within Local 1566's jurisdiction. The committee further declared, however, that the parties would be bound by any NLRB ruling concerning the disputed work.

By letter to Holt, dated May 30, 1991, Local 724 demanded all the refrigerated container work that was being transferred to the Packer Avenue facility but which had been awarded to employees at the Gloucester, New Jersey facility by the Board's April 1989 decision. The letter stated, inter alia:

> [W]e demand all of this work at Packer Avenue, otherwise, Local 724 will taken [sic] whatever action it deems necessary, including economic action, to protect its membership and its jurisdiction.

In early June 1991, the consolidation was complete and ABC Line began arriving at Packer Avenue with container ships. Holt had assigned the work to employees represented by Local 1566. When ABC Line called at the facility on June 7, 1991, there was a work stoppage at the reefer bank for a few hours while representatives of Local 724 met with representatives of Local 1566 to discuss who was going to do the work. Holt assigned the disputed work to employees represented by Local 1566 and they have been performing the work since that time. On June 7, 1991, pursuant to its collective-bargaining agreement, Local 724 filed a grievance with Holt over this work assignment.

B. *Work in Dispute*

The disputed work involves the plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers from vessel carriers, including ABC Line, Maersk Lines,[3] Columbus Lines, and ACT Pace Lines (now known as Blue Star Pace Lines), which previously arrived at Holt Cargo Systems, Inc.'s terminal in Gloucester City, New Jersey, and which are now arriving at Holt Cargo Systems, Inc.'s terminal at Packer Avenue in Philadelphia, Pennsylvania.

C. *Contentions of the Parties*

The Employer and Local 724 contend that the work in dispute should be assigned to employees represented by Local 724 based on employer preference; safety, efficiency, and cost of operation; its contract with Local 724; and relative skills. Local 724 argues that, in addition to these factors, employees represented by it have historically performed the work at Holt's Gloucester, New Jersey facility and that the Board awarded the reefer work in Gloucester to employees represented by it in a prior 10(k) decision.[4]

Local 1566 contends that there is no reasonable cause to believe that Section 8(b)(4)(D) has been violated because: (1) there was no genuine threat, restraint, or coercion by Local 724; (2) the disputed work is not controlled by Holt, but is controlled by the vessel carriers who are parties to the ILA Master Contract, which is the dispositive agreement here; and (3) any dispute was generated by Holt, a nonneutral in the dispute. Local 1566 further contends that if the Board does decide this case on the merits, the employees it represents should be awarded the work. Local 1566 relies on: (1) the Employer's past practice; (2) the skills possessed by Local 1566-represented employees; (3) Employer and Local 724 acquiescence in employees represented by Local 1566 performing the work; (4) the loss of employment by employees represented by Local 1566 who are already doing the work; and (5) the prevailing area practice.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

It is undisputed that Local 724 informed Holt by its May 30, 1991 letter that it would take ''whatever action it deems necessary, including economic action, to protect its membership and its jurisdiction'' if employ-

[3] Vessels owned or operated by Maersk Lines discontinued calling at the Packer Avenue Marine Terminal about October 1991.

[4] Supra at fn. 1.

ees it represents did not perform the disputed work. Based on this letter, we find that there is reasonable cause to believe that Local 724 has violated Section 8(b)(4)(D) of the Act.[5] See *Electrical Workers IBEW Local 145 (Comanche Machine)*, 188 NLRB 255, 257 (1971) (in which the Board found that a union's vague threat to consider a jurisdictional dispute was sufficient to constitute reasonable cause).[6]

The parties stipulated that there exists no agreed-upon method for the voluntary adjustment of the work which would bind all the parties. Accordingly, we conclude that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

Neither ILA Local 1566 nor IAM Local 724 has been certified by the Board as the bargaining representative of the employees involved in this dispute.

For several years, Holt has had a collective-bargaining relationship with IAM Local 724 that covers its mechanics and other employees who perform maintenance and repair work. Both Thomas Holt, the president of Holt Cargo Systems, Inc., and Local 724 Business Representative Greg McAnally testified that both parties have interpreted their agreements to apply to all Holt's facilities, including its facilities at Gloucester and Packer Avenue. The current agreement, which is effective from October 1, 1991, until October 1, 1995, covers all of the employees in the classifications listed in ''Schedule A'' of the agreement.[7] While the agreement does not specifically mention reefer work, the job descriptions for the classifications arguably cover this work. Thus, for example, the journeyman trailer and chassis mechanic's job includes diagnosing and repairing ''electrical systems'' and ''container structures.''

Holt is also a party to an agreement with the ILA through Holt's membership in the PMTA. PMTA is the collective-bargaining representative for an association of employers engaged in the warehousing and shipping industry in the Port of Philadelphia and vicinity. On the national level, there is an agreement between the ILA and the various regional associations representing shipping companies, known as the Agreement on the Master Contract Issues. A national shippers' association called CONASA is a party to this Agreement on the Master Contract Issues. PMTA, in turn, is a member of CONASA and Holt, by virtue of its membership in PMTA, is bound to the Agreement on the Master Contract Issues. Incorporated by reference into the Agreement on the Master Contract Issues is the so-called Containerization Agreement.[8]

[5] In view of our finding, we need not decide whether Local 724's grievance provides additional evidence on which the Board could find reasonable cause to believe that Local 724 has violated Section 8(b)(4)(D).

[6] We find no persuasive evidence to support Local 1566's contention that there is no reasonable cause to believe that Sec. 8(b)(4)(D) has been violated. First, so far as the record shows, Local 724's April 24 and May 30 letters were arm's-length communications, made at a point where Holt was transferring the container work to Packer. This transfer created uncertainty as to which group of employees would perform the work, and gave Local 724 the opportunity to claim the work by threatening economic action. Second, the history of Holt's assigning the reefer work reveals nothing that would suggest that the work is actually controlled by the vessel carriers. That the vessel carriers have representatives at the terminal, who may monitor the refrigeration in the containers, does not prove that the carriers actually control the assignment of the work in dispute. Stevedoring companies, such as Holt, traditionally control the assignment and performance of this kind of work. Third, the fact that Holt has a preference for having employees represented by Local 724 do the work hardly disqualifies the dispute from consideration under Sec. 10(k). Virtually every employer in a 10(k) case has a preference for assigning work to employees represented by one of two or more competing unions.

[7] ''Schedule A'' lists the following job classifications: truck mechanics; trailer mechanics; forklift mechanics; maintenance mechanics; crane and heavy equipment mechanics; tire repairmen; and utility mechanics or trainees. The agreement contains a job description for most of these positions. There is no geographic limitation contained in the agreement.

[8] The most recent Master Agreement became effective on December 1, 1990. Par. 8 of that agreement provides in pertinent part:

> 8. ILA JURISDICTION OVER WORK COVERED BY THE MASTER AGREEMENT
>
> Management hereby reaffirms that the ILA employee has jurisdiction over longshore, checker, maintenance and other ILA craft work conferred on such workers by the Containerization Agreement . . . .

In addition, par. 10(A) of the Master Agreement provides in part:

> 10(A). MAINTENANCE WORK COVERED BY THE AGREEMENTS
>
> It is agreed that the jurisdiction of the ILA shall cover the maintenance of containers (which term includes chassis) at waterfront container facilities and/or off-pier premises used for servicing and repair of containers and chassis, covered by this Agreement, by ILA maintenance in accordance with the Containerization Agreement . . . .

Par. 1 of the ''Containerization Agreement'' provides in relevant part:

> Management and the Carriers recognize the existing work jurisdiction of ILA employees covered by their agreements with the ILA over all container work which historically has been performed by longshoremen and all other ILA crafts at container waterfront facilities. Carriers, direct employers and their agents covered by such agreements agree to employ employees covered

Continued

Both the Master Agreement and the Containerization Agreement give the ILA jurisdiction over the ''maintenance'' of ''containers,'' which arguably includes the reefer work here in dispute.

Because both Local 1566's and Local 724's agreements contain provisions arguably covering the work in dispute, we find that the factor of collective-bargaining agreements does not favor an award of the disputed work to either group of employees.[9]

2. Employer preference

At the hearing and in its brief, Holt expressed its preference that employees represented by Local 724 perform the plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers at the Packer Avenue Marine Terminal rather than employees represented by Local 1566. We find that this factor favors an award of the disputed work to the employees represented by Local 724.

3. Employer past practice

When Holt first took possession of the Packer Avenue Marine Terminal on April 1, 1989, it assigned the repair of electrical generating units to employees represented by Local 724 and assigned the reefer work to employees represented by Local 1566. That practice has continued to the present. The work is performed for a variety of carriers, including Multiple, Sealand, MIK, and Lloyd. At its Gloucester facility, Holt continued to allow employees represented by Local 1566 to do the reefer work on the ACT Pace and Columbus Lines containers even after issuance of the 10(k) Determination of Dispute awarding that work to Local 724. Based on the Employer's practice prior to this dispute, we find that this factor favors an award of the work in dispute to employees represented by Local 1566.

4. Area practice

At other terminals in the area from Pennsylvania to New Jersey, employees doing the work here in dispute are represented by a number of different unions. For example, teamsters perform it at Petty's Island and Northern Metals; boilermakers, at Penn Terminals; and longshoremen perform the work at Tioga. Thus, area practice does not favor an award of the disputed work to employees represented by either Union.

5. Economy and efficiency

The Local 724-represented mechanics are regular, full-time employees and already perform virtually the same work as that in dispute when ''pre-tripping'' reefer containers. They routinely perform maintenance and repair work on the diesel generator sets used on the electric containers and they fix both electric and nitrogen reefer containers. The Employer observes that it can use its mechanics to perform the work in dispute as well as the related maintenance and repair work. The Local 1566-represented employees, who are hired daily under a ''casual'' system, cannot be cross-utilized in this way. We find that the factor of economy and efficiency of operation favors an award of the disputed work to employees represented by Local 724.

6. Relative skills and safety

Since 1984, when container cranes were first used at Gloucester, Local 724-represented employees primarily performed the plugging, unplugging, hooking, hanging, and monitoring of electrical units. Local 1566-represented employees, on the other hand, primarily performed nitrogen work at Gloucester and performed work on both electrical and nitrogen units at Packer Avenue. Handling liquid nitrogen can be dangerous if appropriate safety precautions are not observed. Likewise, employees handling electrical generator sets carrying 240 volts of electricity must also take safety precautions when handling these units. On balance, this factor does not favor assignment to employees represented by either Union.

7. Gain or loss of employment

The Employer's Local 724-represented mechanics, as noted above, are regular, full-time employees who perform for the Employer other functions, aside from the work in dispute, involved in the handling of refrigeration containers. Neither the Employer nor Local 724 claims that these employees will suffer any loss of employment if the Board awards the disputed work to Local 1566-represented employees. Although Local 1566 claims that employees it represents will lose their jobs in the event of an adverse determination here, we note that these employees only work intermittently for the Employer because they are dispatched as needed from the hiring hall that Local 1566 operates. Thus,

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by their agreements to perform such work which includes, but which is not limited to:

. . . .

(e) the maintenance and repair of containers.

[9] Our dissenting colleague concludes that Local 1566's collective-bargaining agreement more specifically covers the disputed work and that, therefore, this factor favors an award to employees that Local 1566 represents. It is clear, however, that the Employer has interpreted both these contracts as covering the disputed work because it has assigned such work to each competing group on particular jobs (Local 1566 at Packer Avenue and Gloucester City and Local 724 at Gloucester City only). We also stress, in evaluating this factor, that neither of the collective-bargaining agreements at issue specifically mentions the kind of refrigeration work which is the subject of this dispute. Therefore, contrary to the dissent, we find that in the present case, where both relevant contracts arguably cover the disputed work and the Employer has interpreted them in this manner, the ILA Master Contract does not describe the disputed work with sufficient precision to favor an award to Local 1566-represented employees. Cf. *Steelworkers Local 392 (BP Minerals)*, 293 NLRB 913, 914–915 (1989).

this case does not involve a situation where our award of the disputed work could displace any permanent employees of the Employer. Compare *Teamsters Local 639 (United Rigging & Hauling)*, 296 NLRB 803, 807 (1989). For this reason, we find that the factor of job gain or loss is inconclusive and does not favor an award to either group of employees.

Conclusion

After considering all the relevant factors, we find that the factors of the Employer's preference and efficiency and economy of operations favor an award of the disputed work to employees represented by Local 724. Although the factor of the Employer's past practice conversely favors an award to Local 1566-represented employees, we find that this factor is clearly outweighed by the two factors favoring an award to the competing group of employees. We also note that the Board generally gives considerable weight to the Employer's uncoerced preference in the assignment of the disputed work which, as noted, favors employees represented by Local 724 here. *Longshoremen ILA Local 50 (Brady-Hamilton Stevedore)*, 244 NLRB 275, 276 (1979). Accordingly, we shall award the disputed work to Local 724-represented employees, but not to that Union or its members.[10]

Scope of the Award

Local 724 has requested a broad determination, covering any location where Holt performs, or may in the future perform, such work within the Port of Philadelphia. We find a broad determination inappropriate. Here, the labor organization alleged to have engaged in coercive conduct is the organization that represents the employees to whom we are awarding the work and to whom the Employer contemplates assigning it. The rival claimant has not been found to have engaged in coercive conduct, nor does the record reveal that it has any disposition to do so. In circumstances such as these, the Board has declined to make a broad determination. *Iron Workers Local 433 (Crescent Corp.)*, 277 NLRB 670, 675 (1985). Accordingly, the determination is limited to the controversy that gave rise to this proceeding.

[10] Member Raudabaugh notes that the award of the work to employees represented by Local 724 will result in a loss of work for employees referred out of the Local 1566 hiring hall. However, such an award will result in a concomitant increase in work for employees represented by Local 724. Similarly, an award of the work to employees represented by Local 1566 would result in a loss of work for employees represented by Local 724 and an increase in work for employees referred out of the Local 1566 hiring hall. In these circumstances, Member Raudabaugh considers this factor to be neutral. Member Raudabaugh distinguishes the instant situation from those in which a given work assignment would result in a gain of work for one group without a concomitant loss by the other, or vice versa. See *Machinists Local 225 (Cessna Aircraft)*, 246 NLRB 24 (1979); *Woodworkers Local 3-364 (Potlatch Corp.)*, 247 NLRB 1465 (1980); *Laborers Local 681 (Elmhurst Chicago)*, 263 NLRB 980 (1982).

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Holt Cargo Systems, Inc., represented by International Association of Machinists and Aerospace Workers, Local 724, AFL–CIO, are entitled to perform the plugging, unplugging, hooking, hanging, and monitoring of refrigerated containers from vessel carriers, including ABC Line, Maersk Lines, Columbus Lines, and ACT Pace Lines (currently called Blue Star Lines), which previously arrived at Holt Cargo Systems, Inc.'s terminal in Gloucester City, New Jersey, and which are now arriving at Holt Cargo Systems, Inc.'s terminal at Packer Avenue in Philadelphia, Pennsylvania.

MEMBER OVIATT, dissenting in part.

I would award the work in dispute to employees represented by International Longshoremen's Association, Local 1566. I rely principally on the Employer's obligation under the ILA Master Contract and the Employer's past practice.

The Master Agreement, to which Holt is bound, unequivocally gives Local 1566 jurisdiction over the ''maintenance'' of ''containers.'' Reefer work, which involves hooking and hanging nitrogen bottles and plugging and unplugging electrical sources, as well as hanging generator sets, is just such ''maintenance'' of the refrigerated ''containers.'' Thus, the ILA contract plainly covers the reefer work.

It stretches the language of the Local 724 contract, however, to find that it covers reefer work. Although the job descriptions appended to that contract cover the ''diagnosis'' and ''repair'' of containers, there is not one word about the ''maintenance'' of containers (or of any other equipment, for that matter) in any of them. Fairly read, only the ILA Master Agreement really covers the work in dispute. Thus, I would find that the collective-bargaining agreement factor favors Local 1566.

Holt Cargo Systems, Inc. took over the operation of the Packer Avenue Marine Terminal about April 1, 1989. From the inception of its operation, Holt employed personnel represented by ILA Local 1566 to monitor refrigerated containers. ILA members continued to perform this work for 2 years before this dispute arose. This past practice, which strongly favors Local 1566, should not be easily overridden.

Currently the majority of reefer containers coming to Packer Avenue are the ACT Pace and Columbus Lines containers that use nitrogen bottles. Employees represented by Local 724 have never performed any work involving nitrogen units. Having initially made this assignment to employees represented by Local

1566, the Employer should not be able blithely to repudiate that assignment and its contractual obligations when there has been no significant change in circumstances to justify reassignment to other employees.[1]

I disagree with the majority that the gain-or-loss-of-employment factor is neutral. A core group of two or three men represented by Local 1566 have served as a steady work force as long as the work was available. This core group was supplemented by employees who worked on a daily, as-needed basis. The fact that they may perform the work intermittently does not mitigate or lessen the impact of losing the opportunity to perform the work altogether. Accordingly, I find that the factor of job loss favors an award to employees represented by Local 1566.

I would thus find that three factors—collective-bargaining agreements, past practice, and employment—strongly favor Local 1566. Like my colleagues, I would find that only two factors favor Local 724. Accordingly, I would award the work in dispute to employees represented by Local 1566.

[1] The Employer planned to consolidate its operations at Packer Avenue from the outset of its takeover of the terminal. Thomas Holt, the chief executive officer and president of Holt Cargo Systems for the previous 20 years, testified that now that the consolidation is complete, the number of containers arriving at the Packer Avenue Terminal has increased, but the nature of the work is identical to what it was when the assignment was made. A mere increase in volume is not a sufficient reason to negate a previous assignment of work from one group of employees to another.